

Electronically Filed
Supreme Court
SCPW-19-0000088
12-FEB-2019
10:18 AM

No. SCPW- _____

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

CLARE E. CONNORS, ATTORNEY)	Original Proceeding
GENERAL OF THE STATE OF HAWAI‘I,)	
)	
Petitioner,)	
)	
vs.)	
)	
KEITH M. KANESHIRO, PROSECUTING)	
ATTORNEY OF THE CITY AND COUNTY)	
OF HONOLULU,)	
)	
Respondent.)	
_____)	

PETITION FOR EXTRAORDINARY WRIT

**STATEMENT AND DISCUSSION OF PERTINENT FACTS, STATEMENT OF
JURISDICTION AND AUTHORITY, STATEMENT OF ISSUES AND RELIEF
SOUGHT, AND STATEMENT OF REASONS FOR ISSUING THE WRIT**

DECLARATION OF SUSAN BALLARD

DECLARATION OF CLARE E. CONNORS

EXHIBITS 1 – 10

CERTIFICATE OF SERVICE

CLARE E. CONNORS 7936
Attorney General of the State of Hawai'i
CLYDE J. WADSWORTH 8495
Solicitor General of the State of Hawai'i

Department of the Attorney General, State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-1300
Facsimile: (808) 586-1369

Attorneys for Petitioner
CLARE E. CONNORS
ATTORNEY GENERAL OF THE STATE OF HAWAI'I

TABLE OF CONTENTS

PETITION FOR EXTRAORDINARY WRIT	i
STATEMENT AND DISCUSSION OF PERTINENT FACTS	1
A. Kaneshiro’s Purported Status as the Target of a Federal Criminal Investigation into His Conduct as the Honolulu Prosecuting Attorney.....	1
B. Kaneshiro’s Personal Interest Conflicts with His Duty to the Public and His Ability to Conduct the Affairs of the Department of the Prosecuting Attorney.	3
STATEMENT OF JURISDICTION AND AUTHORITY.....	8
STATEMENT OF ISSUES PRESENTED AND THE RELIEF SOUGHT	10
STATEMENT OF REASONS FOR ISSUING THE WRIT	11
A. This Court is Authorized to Issue a Writ in Aid of Its Responsibilities to Regulate the Practice of Law in this State and to Enforce its Rules.....	11
B. The Attorney General, as Chief Legal Officer of the State, has Standing to Petition this Court to Issue the Writ.....	13
C. Compelling Circumstances, Including the Public’s Confidence in the Administration of Justice and the Need for Law Enforcement Agencies to Cooperate, Warrant the Suspension of the Prosecuting Attorney	15
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases

<i>Amemiya v. Sapienza</i> , 63 Haw. 424, 629 P.2d 1126 (1981)	i, 8, 13, 14, 16
<i>Akinaka v. Disciplinary Bd. of Haw. Sup. Ct.</i> , 91 Hawai‘i 51, 979 P.2d 1077 (1999).....	9, 11
<i>Breiner v. Sunderland</i> , 112 Hawai‘i 60, 143 P.3d 1262 (2006).....	11
<i>Chun v. Bd. of Trustees of Emps.’ Retirement Sys.</i> , 87 Hawai‘i 152, 952 P.2d 1215 (1998).....	13, 16
<i>Darling Apartment Co. v. Springer</i> , 22 A.2d 397, 403 (Del. 1941)	16
<i>Dejetley v. Kaho‘ohalahala</i> , 122 Hawai‘i 251, 226 P.3d 421 (2010).....	15
<i>Eames v. Rudman</i> , 333 A.2d 157 (N.H. 1975)	17
<i>In re Disciplinary Bd. of Haw. Sup. Ct.</i> , 91 Hawai‘i 363, 984 P.2d 688 (1999).....	11
<i>Marsland v. First Hawaiian Bank</i> , 70 Haw. 126, 764 P.2d 1228 (1988)	14, 15
<i>Office of Disciplinary Counsel v. Lau</i> , 79 Hawai‘i 201, 900 P.2d 777 (1995).....	9
<i>Ruggles v. Yagong</i> , 135 Hawai‘i 411, 353 P.3d 953 (2015).....	14
<i>Sapienza v. Hayashi</i> , 57 Haw. 289, 554 P.2d 1131 (1976)	i, 3, 4, 14

Constitutional Provisions

Haw. Const. art. V, § 6.....	13
Revised Charter of the City & County of Honolulu 1973 (2017 Edition), art. VIII, § 8-104	3, 4, 13
art. VIII, § 8-105	4

Statutes

HRS § 26-7	13, 17
HRS § 28-1	14
HRS § 28-2	14
HRS § 602-5	iv

Rules

HRAP 21	iv
HRPC, Preamble	ii, iii
HRPC 1.7	i, ii, 11, 12, 17
HRPC 1.11	11
HRPC 3.8	iii
HRPC 8.3	i, 12, 15
HRPC 8.4	iii, 12
RSCH 1.1	i, 8, 11
RSCH 2.1	8, 11
RSCH 2.2	9, 11
RSCH 2.3	iv, 9
RSCH 2.23	i, 9, 10, 12

Other Authorities

Justice Manual, Title 9, Section 9-11.153.....	1
--	---

No. SCPW- _____

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

CLARE E. CONNORS, ATTORNEY)	Original Proceeding
GENERAL OF THE STATE OF HAWAI‘I,)	
)	
Petitioner,)	
)	
vs.)	
)	
KEITH M. KANESHIRO, PROSECUTING)	
ATTORNEY OF THE CITY AND COUNTY)	
OF HONOLULU,)	
)	
Respondent.)	
_____)	

PETITION FOR EXTRAORDINARY WRIT

Petitioner Clare E. Connors, Attorney General of the State of Hawai‘i, respectfully moves this Honorable Court to issue an Extraordinary Writ directed to Keith M. Kaneshiro, Prosecuting Attorney of the City and County of Honolulu, ordering his immediate suspension from practicing law as the Honolulu Prosecuting Attorney until such time as the conflict of interest that presently exists is resolved.

Petitioner brings this action as the State’s chief legal officer and as an officer of the court pursuant to Rules 1.7(a)(2) and 8.3 of the Hawai‘i Rules of Professional Conduct (“HRPC”). *See also Amemiya v. Sapienza*, 63 Haw. 424, 425, 629 P.2d 1126, 1128 (1981) (internal citations omitted); *Sapienza v. Hayashi*, 57 Haw. 289, 292, 554 P.2d 1131, 1134 (1976). This Court has jurisdiction over the instant petition pursuant to Rules 1.1 and 2.23 of the Rules of the Supreme Court of the State of Hawai‘i (“RSCH”). RSCH 1.1 (affirming “the ultimate authority of the Supreme Court to oversee and control the privilege of the practice of law in this state”), 2.23 (providing that “[u]pon receipt of sufficient evidence

demonstrating that an attorney has committed a violation of the Hawai‘i Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Counsel may: (1) transmit the evidence to the supreme court. . .”).

Presently, Kaneshiro practices law in the State of Hawai‘i as the Prosecuting Attorney for the City and County of Honolulu. Recently, it was reported that Kaneshiro is the target of a federal criminal investigation into conduct he engaged in while serving in public office as the Honolulu Prosecuting Attorney. His purported status as a target of a federal criminal investigation related to his conduct as the Honolulu Prosecuting Attorney creates a “concurrent conflict of interest” that requires immediate resolution. Pursuant to HRPC Rule 1.7(a)(2), a conflict of interest exists where “there is a significant risk that the representation of one or more clients will be materially limited by . . . *a personal interest* of the lawyer” (emphasis added). Here, Kaneshiro’s personal interest in defending conduct he engaged in as the Honolulu Prosecuting Attorney conflicts with the interests of the public represented by the Department of the Prosecuting Attorney for the City and County of Honolulu, which Kaneshiro presently continues to oversee and direct.

Importantly, Kaneshiro – as an officer of the court and as a public officer with “legal responsibilities going beyond those of other citizens” – has the primary responsibility to resolve questions of conflict of interest as soon as they arise. *See* HRPC, Preamble: A Lawyer’s Responsibilities 1 (establishing that a lawyer is “an officer of the legal system, and a public citizen having special responsibility for the quality of justice”); *see also* HRPC 1.7 cmt. 15 (“Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation.”).


To resolve the conflict of interest recently identified, Kaneshiro could do what other public officers in similar situations have done: take leave from public office pending resolution of the criminal investigation. HRPC 8.4 cmt. 4 (“Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional and ethical obligations of an attorney.”). Kaneshiro’s failure to resolve the conflict of interest on his own runs directly contrary to his obligations both as a lawyer practicing in the State of Hawai‘i and as a public officer with special duties to the public. HRPC 3.8 cmt. 1 (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”). His dereliction also places the burden on fellow officers of the legal system, who are obligated by the HRPC to “aid in securing [the Rules’] observance by other lawyers.” HRPC, Preamble: A Lawyer’s Responsibilities 12.

Kaneshiro’s refusal to take leave from his public office has subjected every case being handled by the Honolulu Department of the Prosecuting Attorney to potential ethical and legal challenges. His refusal to take leave – even temporarily during the pendency of the federal criminal investigation purportedly targeting him – not only compromises the integrity of the prosecutions being conducted under his authority, it seriously harms the working relationship between his office and crucial counterparts in the law enforcement community, including the Chief of the Honolulu Police Department, the Attorney General, and federal agencies. The narrowly tailored Writ sought by Petitioner is therefore necessary not only to address the substantial threat of serious harms to the public but to restore confidence and trust in the administration of justice by the Department of the Prosecuting Attorney for the City and County of Honolulu.

For these reasons, and those more fully discussed herein, Petitioner respectfully requests that the Court impose the narrowly tailored relief sought: immediate suspension of Kaneshiro's practice of law as the Honolulu Prosecuting Attorney until such time as the conflict presented by his purported status as a target of a federal criminal investigation is resolved and the appearance of impropriety no longer exists. RSCH 2.3(a)(2).

This Petition for Extraordinary Writ is brought pursuant to the authorities identified herein, as well as Hawaii Revised Statutes § 602-5 and Hawai'i Rules of Appellate Procedure Rule 21, and is based on the Statement and Discussion of Pertinent Facts, Statement of Jurisdiction and Authority, Statement of the Issues and Relief Sought, and Statement of Reasons for Issuing the Writ; Declaration of Susan Ballard; Declaration of Clare E. Connors; and Exhibits 1 – 10.

DATED: Honolulu, Hawai'i, February 12, 2019.



CLARE E. CONNORS
Attorney General
State of Hawai'i

STATEMENT AND DISCUSSION OF PERTINENT FACTS

A. Kaneshiro's Purported Status as the Target of a Federal Criminal Investigation into His Conduct as the Honolulu Prosecuting Attorney

On or around December 10, 2018, it was publicly reported that Kaneshiro, Prosecuting Attorney of the City and County of Honolulu, “received a Justice Department ‘target letter’ informing him that he’s under investigation in the federal public corruption probe that has already led to two indictments against his former top deputy, Katherine Kealoha.”¹ Shortly before this information became public, news outlets reported that First Deputy Prosecuting Attorney Chasid Sapolu² and Deputy Prosecuting Attorney Janice Futa³ had received “subject letters”⁴ from the United States Department of Justice (“DOJ”). In response, Kaneshiro declined to comment on the investigation or his receipt of a DOJ target letter.⁵ However, he also expressly declined calls to step down from his position as Honolulu Prosecuting Attorney.⁶

A “target” of a federal criminal investigation is a person as to whom a federal prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant. *See* Justice Manual, Title 9, Section 9-11.153, available at

¹ Exhibit 2 to the Declaration of Clare E. Connors (“Connors Dec.”), attached hereto.

² Exhibit 3 to Connors Dec., attached hereto.

³ Exhibit 2 (Futa’s receipt of a subject letter has not been confirmed by the Department).

⁴ *See* Exhibit 3 (“A subject letter means that the U.S. Attorney believes . . . Sapolu [and Futa] engaged in suspicious and unethical conduct, but wants to do more investigating.”).

⁵ *See, e.g.*, Exhibit 4 to Connors Dec., attached hereto (“The city’s top prosecutor has not commented on being a target of a federal investigation.”).

⁶ Exhibit 5 to Connors Dec., attached hereto (“For the first time Monday, embattled city Prosecutor Keith Kaneshiro responded to growing calls to step aside, saying that he was elected for four years, and that his office is being run effectively.”).

<https://www.justice.gov/jm/jm-9-11000-grand-jury#9-11.153>.⁷ While Kaneshiro has not publicly acknowledged being advised that he is a target, at least one of his top deputies has confirmed that he (the deputy) is a “subject” of a federal criminal investigation, *see* Exhibit 5, which is defined as a person whose conduct is within the scope of the grand jury’s investigation. It would appear that this investigation, which has been confirmed to involve the conduct of at least one of Kaneshiro’s top deputies, has resulted in Kaneshiro being advised he is a putative defendant. Importantly, no Fifth Amendment rights are implicated by confirming whether or not one has received a target letter. As Kaneshiro could confirm or deny his receipt of a target letter, his refusal to do so in light of public reports, and the harmful effects of those reports, provides a reasonable basis to assume he has received such a letter.

Despite this circumstance, Kaneshiro continues to exercise his discretionary authority over the various, important matters of public concern handled by the Honolulu Department of the Prosecuting Attorney. His refusal to step down, even temporarily until the conflict arising from the federal investigation targeting his conduct as Honolulu Prosecuting Attorney ceases to exist, subjects the matters handled by the Department of the Prosecuting Attorney for the City and County of Honolulu to potential ethical and legal challenges.⁸

⁷ A sample target letter can be found in the Criminal Resource Manual of the Justice Manual at 160, available at <https://www.justice.gov/jm/criminal-resource-manual-160-sample-target-letter>.

⁸ Exhibit 6 to Connors Dec., attached hereto (““This is causing damage every single day.’ [Victor] Bakke said, ‘The defense attorneys love it, we’ll be filing motions until the cows come home. [B]ecause it’s all tainted it’s from the very top.’”); *see also* Exhibit 4 (“Days after one of Honolulu’s lead deputy prosecutors announced he’s the subject of a federal investigation, some of Honolulu’s top defense attorneys say they’ll challenge past and pending cases.”).

B. Kaneshiro's Personal Interest Conflicts with His Duty to the Public and His Ability to Conduct the Affairs of the Department of the Prosecuting Attorney

The Attorney General of the State of Hawai'i has grave concerns about Kaneshiro's continued oversight of the Department of the Prosecuting Attorney while he may be the target of a federal criminal investigation. Declaration of Clare E. Connors ("Connors Dec.") at ¶ 8. The Honolulu Prosecuting Attorney is charged with prosecuting "offenses against the laws of the state under the authority of the attorney general of the state." Revised Charter of the City & County of Honolulu 1973 (2017 Edition) (hereinafter "Revised Charter"), art. VIII, § 8-104(1)(b).

Pursuant to this authority, the Honolulu Prosecuting Attorney oversees the prosecution of offenses under the laws of the State of Hawai'i as well as the ordinances and rules and regulations of the City of Honolulu. *Id.*; see also *Sapienza v. Hayashi*, 57 Haw. 289, 293-294, 554 P.2d 1131, 1135 (1976) ("The prosecuting attorney is mandated by law to conduct all prosecutions for offenses against the laws of the State and the ordinances and rules and regulations of the City and County of Honolulu."). These duties are set forth as follows in the Revised Charter:

Section 8-104. Powers, Duties and Functions –

1. The prosecuting attorney shall:
 - (a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.
 - (b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.
 - (c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.
 - (d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been

committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and investigate all matters which may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.

....

Revised Charter, art. VIII, § 8-104.

The Honolulu Prosecuting Attorney also has the authority under the Revised Charter to “appoint deputies, administrative or executive assistants, and other necessary staff, including investigators who shall have all the powers and privileges of a police officer of the city.” Revised Charter, art. VIII, § 8-105.

As the chief law enforcement officer of the State of Hawai‘i, the Attorney General has a duty to ensure the integrity of the prosecutions occurring under her authority. Connors Dec. at ¶¶ 6 (quoting Revised Charter, art. VIII, § 8-104(1)(b)); 7. This obligation encompasses the duty to ensure that the Prosecuting Attorney is able to execute the duties of that office without “an appearance of impropriety,” that is, unencumbered by any ethical or legal issues. *See Sapienza*, 57 Haw. at 291, 292, 554 P.2d at 1134 (“The attorney general had the requisite standing to move for the petitioners’ disqualification.”).

While all aspects of the duties of the Honolulu Prosecuting Attorney are adversely impacted by the nature of the conflict at issue here, foremost is the breadth of authority and discretion Kaneshiro continues to exercise. Kaneshiro, as the Honolulu Prosecuting Attorney, has discretion regarding what kinds of offenses are prosecuted, who is prosecuted, how the prosecutions are conducted and how the cases are resolved, including but not limited to plea agreements with cooperation provisions, sentencing provisions and

other conditions. He also oversees the Department's engagement with potential witnesses, including informants who may have information about both state and federal criminal investigations. Not surprisingly, motions have been filed alleging that the Prosecuting Attorney has treated defendants differently based on whether they might have information adverse to Kaneshiro's personal interests in defending against the matters under federal investigation. In one instance, a defense attorney claimed the Department of the Prosecuting Attorney prevented his client from cooperating because she had information relevant to the federal investigation.⁹ The attorney specifically identified an agreement entered into by his client and Kaneshiro, and claimed it was used to prevent her from sharing information.¹⁰ As a result of the conflict, the attorney asked for the entire Department to be disqualified.¹¹ In another instance, reported in the press on February 11, 2019, two employees of the Department of the Prosecuting Attorney alleged that the Honolulu Prosecutor is retaliating against them because they testified as grand jury witnesses in the federal, public corruption case against Kaneshiro.¹²

Because his conduct as the Honolulu Prosecuting Attorney is the conduct that purportedly is targeted in the federal criminal investigation, his exercise of discretion in all areas under his authority becomes subject to ethical concerns and potential legal challenges. Beyond just the appearance of impropriety arising from the fact his conduct as

⁹ Exhibit 7 to Connors Dec., attached hereto.

¹⁰ Exhibit 8 to Connors Dec., attached hereto.

¹¹ Exhibit 9 to Connors Dec., attached hereto.

¹² Exhibit 10 to Connors Dec., attached hereto.

Honolulu Prosecuting Attorney is under federal criminal investigation, each matter that is subject to Kaneshiro's discretion and influence may be subject to challenge.¹³

Additional concerns arise from the fact the Honolulu Prosecuting Attorney participates in a number of coordinated law enforcement efforts. Predictably, Kaneshiro's purported receipt of a target letter has caused a breakdown in communication and coordination with multiple key stakeholders responsible for law enforcement in the City and County of Honolulu. For example, the Honolulu Prosecuting Attorney attends monthly public safety staff meetings with key City and County officials. *See* Declaration of Susan Ballard ("Ballard Dec.") at ¶ 6. These meetings, led by the Mayor, are attended by the City and County's Managing Director, department heads and deputies from the Honolulu Police Department ("HPD") and Honolulu Fire Department, and representatives from the Department of the Corporation Counsel. Ballard Dec. at ¶¶ 7, 9.

In December 2018, upon receiving reports that Kaneshiro had received a target letter relating to a federal criminal investigation of him and the Department of the Prosecuting Attorney, HPD Chief Susan Ballard became uncomfortable with Kaneshiro's continued attendance at the monthly public safety meetings. Ballard Dec. at ¶¶ 8, 10. Sensitive information is shared and discussed at these meetings, and Chief Ballard has concluded it is not in the best interest of the HPD or the City and County of Honolulu to share sensitive information with Kaneshiro while he may be the target of a federal criminal investigation. Ballard Dec. at ¶ 11.

¹³ *See* Exhibit 6 ("‘This is causing damage every single day.’ [Victor] Bakke said, ‘The defense attorneys love it, we’ll be filing motions until the cows come home. [B]ecause it’s all tainted it’s from the very top.’"); *see also* Exhibit 4 ("Days after one of Honolulu's lead deputy prosecutors announced he's the subject of a federal investigation, some of Honolulu's top defense attorneys say they'll challenge past and pending cases.").

Because of the relationship between HPD and the Department of the Prosecuting Attorney, it is imperative that Chief Ballard has an effective professional relationship with the Honolulu Prosecuting Attorney. In this regard, Kaneshiro's purported target status has created an untenable situation for HPD, which relies upon the Department of the Prosecuting Attorney to prosecute the criminal matters it investigates both competently and free of conflicts that might give rise to adverse outcomes. Chief Ballard is appropriately concerned that Kaneshiro's current situation could adversely affect or compromise pending, closed and future cases involving HPD. Ballard Dec. at ¶ 15. Chief Ballard documented these concerns in an email, dated December 17, 2018, to Roy Amemiya, Managing Director of the City and County of Honolulu. Ballard Dec. at ¶¶ 12-13; *see also* Exhibit "1" attached hereto. Despite evidence that HPD's relationship is compromised and impaired by the fact the Honolulu Prosecuting Attorney purportedly is the target of an active federal criminal investigation, Kaneshiro has refused to address the situation by taking a leave from public office – even as others similarly situated have recognized that a temporary leave is eminently appropriate. Ballard Dec. at ¶ 14.

As a practical matter, the Attorney General also must have a working relationship with the Prosecuting Attorney. Kaneshiro's purported status as the target of a federal criminal investigation has fatally impaired this relationship. *See* Connors Dec. at ¶¶ 7-8. It also has impaired the ability of other law enforcement entities to work effectively with the Department of the Prosecuting Attorney, including in joint law enforcement initiatives such as the High Intensity Drug Trafficking Area program and other joint state-federal prosecution task forces. Connors Dec. at ¶ 9. Kaneshiro's continued involvement in these programs, including his presence at task force meetings while he very likely is the target

of an active federal criminal investigation, impairs the ability of law enforcement partners to talk freely and to engage in the kind of discourse necessary to carry out sensitive law enforcement initiatives effectively and in the best interests of public safety. *Id.*

For these reasons, a compelling public interest requires action to address the conflict Kaneshiro has refused to resolve himself. *See Amemiya v. Sapienza*, 63 Haw. 424, 428, 629 P.2d 1126, 1129 (1981) (“[W]here the public prosecutor has refused to act and such refusal amounts to a serious dereliction of duty on his part, or where, in the unusual case, it would be highly improper for the public prosecutor and his deputies to act, the attorney general may supersede the public prosecutor.”). Since Kaneshiro has refused to address the conflict himself, as he is obligated to do by the HRPC, Petitioner requests the Court to issue a Writ directing such action as would resolve the conflict of interest, namely, suspension of Kaneshiro’s ability to practice law as the Honolulu Prosecuting Attorney until the conflict no longer exists and the appearance of impropriety is addressed.

Importantly, this petition seeks only an interim suspension of Kaneshiro from practicing law in his current public office. It does not seek to fire, impeach, debar or sanction Kaneshiro; it only seeks to address the conflict and the substantial threat of serious harm caused to the public so long as the conflict exists.

STATEMENT OF JURISDICTION AND AUTHORITY

The applicable rules and law firmly establish that it is “the ultimate authority of the Supreme Court to oversee and control the privilege of the practice of law in this state.” RSCH 1.1. Any attorney admitted to practice in this state is subject to the “exclusive disciplinary jurisdiction of the supreme court. . .” RSCH 2.1. Moreover, the Rules of the Supreme Court of the State of Hawai‘i provide that the HRPC “shall govern the conduct

of all attorneys subject to discipline under this rule.” RSCH 2.2; *see also Akinaka v. Disciplinary Bd. of Haw. Sup. Ct.*, 91 Hawai‘i 51, 57-58, 979 P.2d 1077, 1083-84 (1999) (“This court has the ultimate responsibility to ‘regulate the practice of law in this state and to ensure that the integrity of the profession is maintained by disciplining attorneys who indulge in practices inconsistent with the high ethical standards demanded of all members of the bar.’”) (quoting *Office of Disciplinary Counsel v. Lau*, 79 Hawai‘i 201, 207, 900 P.2d 777, 783 (1995)).

Among the types of discipline that may be rendered is “[s]uspension by the supreme court for a period not exceeding five years.” RSCH 2.3(a)(2); *see also Akinaka*, 91 Hawai‘i at 55, 979 P.2d at 1081 (“The object of the disciplinary process is not to punish lawyers but to protect members of the public and to ensure the orderly and efficient administration of justice by disciplining those attorneys who do not conform to Hawai‘i Rules of Professional Conduct”).

Here, Petitioner seeks a Writ for an interim suspension of Kaneshiro, as set forth in RSCH 2.23, which provides:

(a) Upon receipt of sufficient evidence demonstrating that an attorney has committed a violation of the Hawaii Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Counsel may:

- (i) transmit the evidence to the supreme court; and
- (ii) contemporaneously make a reasonable attempt to provide the attorney with notice, which may include notice by telephone, that a request for immediate interim suspension has been transmitted to the supreme court.

(b) Upon examination of the evidence transmitted to the supreme court by Counsel and of rebuttal evidence, if any, that the attorney has transmitted to the supreme court prior to the supreme court’s ruling, the supreme court may enter an order immediately suspending the attorney, pending final disposition of the disciplinary proceedings predicated upon the conduct of cause the harm, or may order such other action as it deems appropriate.

RSCH 2.23(a)-(b).¹⁴

Importantly, the RSCH do not require that an interim suspension await the final disposition of the underlying proceeding that gave rise to the transmittal of evidence. RSCH 2.23(b). The suspension may be immediate to prevent the substantial threat of serious harm.

STATEMENT OF ISSUES PRESENTED AND THE RELIEF SOUGHT

The limited issue presented is whether the presence of a conflict of interest arising from the rare and exceptional situation in which the Honolulu Prosecuting Attorney purportedly is a target of a federal criminal investigation involving his conduct as the Prosecuting Attorney warrants immediate suspension by this Court until such time, and only until such time, as the conflict no longer exists and the appearance of impropriety is addressed.

The Attorney General, in her capacity as chief legal officer and as an officer of the Court, asks the Court to grant the Petition and to issue a Writ suspending Kaneshiro from practicing law as the Honolulu Prosecuting Attorney and from exercising any of the powers and performing any of the duties and responsibilities of the Honolulu Prosecuting Attorney and the Department of the Prosecuting Attorney until the conflict presented by these particular circumstances is resolved and/or no longer exists.

¹⁴ Petitioner represents that contemporaneous notice of the filing of the instant petition for immediate interim suspension will be provided to Kaneshiro, as required by RSCH 2.23(a)(ii).

STATEMENT OF REASONS FOR ISSUING THE WRIT

A. This Court is Authorized to Issue a Writ in Aid of Its Responsibilities to Regulate the Practice of Law in this State and to Enforce its Rules

As set forth *supra*, the first rule of the Rules of the Supreme Court of the State of Hawai‘i affirms this Court’s ultimate and inherent authority “to oversee and control the privilege of the practice of law in this state.” RSCH 1.1; *see also Akinaka*, 91 Hawai‘i at 57-58, 979 P.2d at 1083-84 (1999) (internal citations omitted); *Breiner v. Sunderland*, 112 Hawai‘i 60, 64, 143 P.3d 1262, 1266 (2006) (quoting *In re Disciplinary Bd. of Haw. Sup. Ct.*, 91 Hawai‘i 363, 368, 984 P.2d 688, 693 (1999)).

Consistent with this authority, the Court has mandated that “[a]ny attorney admitted to practice law in this state . . . is subject to the exclusive disciplinary jurisdiction of the supreme court[.]” RSCH 2.1. Moreover, the Hawai‘i Rules of Professional Conduct, appended to the Rules of the Supreme Court of Hawai‘i as Exhibit A, expressly “govern the conduct of all attorneys subject to discipline under this rule.” RSCH 2.2(a); *see also* HRPC 1.11 cmt. 1 (“A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7 of these Rules.”).

Pursuant to the HRPC, it is axiomatic that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” HRPC 1.7(a). A concurrent conflict of interest exists when “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person, or by a *personal interest of the lawyer*.” HRPC 1.7(a)(2) (emphasis added). Generally, “[i]f a conflict arises after representation has been

undertaken, the lawyer ordinarily must withdraw from the representation[.]” HRPC 1.7 cmt. 4.

Importantly, the HRPC provide: “Even where there is no direct adversity of interest, a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.” HRPC 1.7 cmt. 8. “The critical questions are the likelihood that a difference in interests will arise and, if it does, whether it will materially interfere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.” *Id.*

Under these rules, “[i]t is professional misconduct for a lawyer to attempt to violate the Rules of Professional Conduct.” HRPC 8.4(a); *see also id.* cmt. 4 (“Lawyers holding public office assume legal responsibilities going beyond those of other citizens.”). Moreover, when one lawyer “knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects,” the lawyer with this knowledge must report the lawyer in violation to the appropriate professional authority. HRPC 8.3(a).

Upon receipt of such a report, this Court has the express authority to issue the type of interim suspension requested here. RSCH 2.23(a) (“Upon receipt of sufficient evidence demonstrating that an attorney has committed a violation of the Hawai‘i Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Counsel may: (i) transmit the evidence to the supreme court. . . .”). And, as previously noted, the Court has the authority to “enter an order *immediately* suspending the attorney, pending

final disposition of the disciplinary proceedings predicated upon the conduct of causing the harm, or may order such other action as it deems appropriate.” RSCH 2.23(b) (emphasis added). Here, for the reasons discussed *supra*, the violation of the HRPC poses a substantial threat of serious harm to the public. As such, the situation warrants the Court’s imposition of an immediate suspension of Kaneshiro from practicing law as the Honolulu Prosecuting Attorney until the conflict and appearance of impropriety no longer exist.

B. The Attorney General, as Chief Legal Officer of the State, has Standing to Petition this Court to Issue the Writ

As this court previously established, the Attorney General “is without question the chief legal officer of the State.” *Amemiya*, 63 Haw. at 425, 629 P.2d at 1128 (citing Hawaii Revised Statutes (“HRS”) § 26-7; Haw. Const. art. V, § 6). Prior to 1957, the Prosecuting Attorney of the City and County of Honolulu served as a deputy of the Attorney General. *Id.* at 426, 629 P.2d at 1128-29. This relationship was altered by Act 233. *Id.* Since 1978, the Honolulu Prosecuting Attorney’s powers derive from the Charter of the City and County of Honolulu. *Id.* at 426-27, 629 P.2d at 1129; *see also* Revised Charter, art. VIII, § 8-104. As discussed, the Charter specifies that one of the primary duties of the Prosecuting Attorney shall be to “[p]rosecute offenses against the laws of the state *under the authority of the attorney general of the state.*” *Id.* at § 8-104(1)(b) (emphasis added).

Several statutory provisions set forth the “broad parameters of the functions and powers of the department of the attorney general[.]” *See Chun v. Bd. of Trustees of Emps.’ Retirement Sys.*, 87 Hawai‘i 152, 168, 952 P.2d 1215, 1231 (1998). Specifically, HRS § 26-7 provides that “[t]he department of the attorney general shall be headed by a single executive to be known as the attorney general” and that the department shall, in pertinent part, “unless otherwise provided by law, prosecute cases involving violations of state laws

and cases involving agreements, uniform laws, or other matters which are enforceable in the courts of the State.”

HRS chapter 28 further codifies the role and duties of the Department of the Attorney General. Specifically, HRS § 28-1 provides: “The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases.” HRS § 28-2 provides, in pertinent part: “The attorney general shall be vigilant and active in defending offenders against the laws of the State, and shall prosecute the same with diligence.”

While the powers of the Honolulu Prosecuting Attorney now derive from the Revised Charter, those powers are still exercised under the authority of the Attorney General. Accordingly, this Court consistently has recognized that “the attorney general, as the chief legal officer for the State, shall have the ultimate responsibility for enforcing penal laws of statewide application.” *Amemiya*, 63 Haw. at 427, 629 P.2d at 1129; *see also Marsland v. First Hawaiian Bank*, 70 Haw. 126, 130, 764 P.2d 1228, 1231 (1988) (citing *Amemiya*) (same). While “traditionally and pursuant to law the office of the prosecuting attorney has been the primary agency charged with initiating and conducting criminal prosecutions,” *Amemiya*, 63 Haw. at 425, 629 P.2d at 1128 (citing *Sapienza*, 57 Haw. 289, 554 P.2d 1131), the ultimate authority for prosecution has always legally remained with the Attorney General. *See also Ruggles v. Yagong*, 135 Hawai‘i 411, 418, 353 P.3d 953, 960 (2015) (referring to “the attorney general’s duty, delegated to the prosecuting attorney, to prosecute violations of the statewide penal code”). For these reasons, this Court has affirmed that “the Prosecutor’s authority to investigate, initiate

and conduct criminal prosecutions within the City and County of Honolulu is derived *directly from* the authority of the Attorney General.” *Marsland*, 70 Haw. at 130, 764 P.2d at 1231 (emphasis added).

The Attorney General also has standing to petition the Court on this matter as an officer of the court under Rule 8.3 of the Hawai‘i Rules of Professional Conduct. As discussed *supra*, Rule 8.3(a), expressly requires that “[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”

C. Compelling Circumstances, Including the Public’s Confidence in the Administration of Justice and the Need for Law Enforcement Agencies to Cooperate, Warrant the Suspension of the Prosecuting Attorney

Here, the Attorney General seeks through this Petition a Writ that would suspend Kaneshiro from exercising the duties of the Prosecuting Attorney for the City and County of Honolulu until such time as the conflict that presently exists by virtue of his purported status as the target of a federal criminal investigation into his conduct while serving as Honolulu Prosecuting Attorney resolves and the appearance of impropriety no longer exists.

Importantly, the Attorney General seeks temporary suspension of Kaneshiro’s performance of the duties of the Honolulu Prosecuting Attorney, as opposed to his removal from office. Removal normally is accomplished through a writ of quo warranto. *See, e.g., Dejetley v. Kaho‘ohalahala*, 122 Hawai‘i 251, 265-66, 226 P.3d 421, 435-36 (2010). In this case, however, neither state law nor the Revised Charter allows for the outright removal of the Prosecuting Attorney by the Attorney General. To this end, the Court has

cautioned: “The phrase ‘under the authority of the attorney general’ is a recognition of [the Attorney General’s] status as the State’s chief law enforcement officer and cannot sensibly be construed as a reservation of power to usurp, at [the Attorney General’s] sole discretion, the functions of the public prosecutor. Any other view would lead to potentially absurd and chaotic results.” *Amemiya*, 63 Haw. at 427, 629 P.2d at 1129.

However, the Court has recognized that the Attorney General “is empowered to intercede” in the prosecutor’s role “in certain compelling circumstances.” *Id.* at 428, 629 P.2d at 1129. The *Amemiya* Court described compelling circumstances to include:

[W]here the public prosecutor has refused to act and such refusal amounts to a serious dereliction of duty on his part, or where, in the unusual case, it would be highly improper for the public prosecutor and his deputies to act, the attorney general may supersede the public prosecutor. In every such case, however, it must be clearly apparent that compelling public interests require the attorney general’s intervention in the particular matter.

Id.

Although the *Amemiya* Court specifically addressed the Attorney General’s ability to supersede the Prosecuting Attorney in specific criminal cases, the Court recognized that because primary responsibility for criminal prosecution is delegated *from* the Attorney General *to* the Prosecuting Attorney, the Attorney General retains “the residual authority to act” as the State’s chief legal officer vis-à-vis a county’s Prosecuting Attorney. *Id.* at 427.

The Attorney General’s retained authority over county prosecutors comports with the generally accepted notion that state attorneys general may continue to exercise the common law powers inherent to their office and that these powers may be used as required in favor of the public interest. *See Chun*, 87 Hawai‘i at 170, 952 P.2d at 1233 (quoting *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941)) (“The authorities

substantially agree that, in addition to those conferred on it by statute, the office of Attorney General is clothed with all of the powers and duties pertaining thereto at common law; and, as the chief law officer of the State, the Attorney General, in the absence of express legislative restriction to the contrary, may exercise all such power and authority as the public interests may from time to time require.”). Indeed, our Legislature has expressly confirmed that “[t]he attorney general shall be charged with such other duties and have such authority as heretofore provided by common law or statute.” HRS § 26-7.

The authority of the Attorney General notwithstanding, and as discussed *supra*, the interim suspension requested here does not constitute removal. *See also Eames v. Rudman*, 333 A.2d 157, 158 (N.H. 1975) (“However, suspension from the performance of certain duties of an office is not removal, and the necessity of protecting the integrity of the prosecution function and ‘maintaining public confidence in the administration of justice’ may require action short of removal from office.”) (internal citations omitted). This New Hampshire case is instructive to the extent the *Eames* court recognized that “[e]xigent circumstances,” namely, criminal “complaints against the county attorney . . . make it inadvisable to allow him to continue to exercise his law enforcement duties while such charges are pending.” *Id.*

Under HRPC 1.7, as clarified by the various comments cited *supra*, Kaneshiro has a clear conflict arising from his purported status as a target of a federal criminal investigation. His decision to remain in office during the pendency of the criminal investigation compromises the integrity of the matters subject to Kaneshiro’s discretion and authority. These circumstances also expose the county prosecutorial process to unnecessary challenges and undermine the public’s confidence in the administration of

justice. In addition, as discussed, the Honolulu Prosecuting Attorney's relationship with HPD, the Attorney General and other law enforcement agencies and coalitions has been seriously impaired by Kaneshiro's conflict of interest and the appearance of impropriety. This in turn has significantly compromised the effectiveness of these coalitions and has an adverse effect on the safety of the public.

Pursuant to the applicable provisions of the HRPC, Kaneshiro has a duty to withdraw from his representation of the public through his position as Honolulu Prosecuting Attorney. His refusal to suspend his exercise of oversight over the Department of the Prosecuting Attorney has compelled the Attorney General to file this Petition and to seek the issuance of a narrowly tailored Writ from this Court that suspends Kaneshiro from exercising his duties and performing the functions of the Honolulu Prosecuting Attorney until such time as the conflict has resolved and there no longer exists an appearance of impropriety.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests this Court to grant the Petition for Extraordinary Writ and to issue the Writ forthwith suspending Honolulu Prosecuting Attorney Keith M. Kaneshiro from exercising any of the powers and performing any of the duties of the Honolulu Prosecuting Attorney and of the Department of the Prosecuting Attorney until such time as the present conflict is resolved and there no longer exists an appearance of impropriety.

DATED: Honolulu, Hawai'i, February 12, 2019.



CLARE E. CONNORS
Attorney General
State of Hawai'i

No. SCPW-_____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CLARE E. CONNORS, ATTORNEY)	Original Proceeding
GENERAL OF THE STATE OF HAWAI'I,)	
)	
Petitioner,)	
)	
vs.)	
)	
KEITH M. KANESHIRO, PROSECUTING)	
ATTORNEY OF THE CITY AND COUNTY)	
OF HONOLULU,)	
)	
Respondent.)	
_____)	

DECLARATION OF SUSAN BALLARD

I, SUSAN BALLARD, hereby declare pursuant to Rule 52, Hawai'i Rules of Appellate Procedure, that:

1. I am a resident of the City and County of Honolulu, State of Hawai'i, and am currently the Chief of the Honolulu Police Department.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. I joined the Honolulu Police Department in 1985, and have worked in a wide range of field and administrative assignments, including the Narcotics/Vice and the Downtown-Chinatown patrol district.
4. As a commander, I have led the Kaneohe and Kalihi patrol districts and the Finance, Training, and Central Receiving divisions.
5. I was sworn in as the Honolulu Police Department's 11th Chief of Police on November 1, 2017.

6. Each month, the Mayor of the City and County of Honolulu holds public safety staff meetings involving key City and County officials.

7. These monthly public safety meetings are led by the Mayor and attended by the City and County's Managing Director, department heads and deputies from the Honolulu Police Department, Honolulu Fire Department, Emergency Management Services, Office of Climate Change, Sustainability and Resiliency, and representatives from the Department of the Corporation Counsel and the Department of the Prosecuting Attorney.

8. I have been attending these meetings in my capacity as Chief of the Honolulu Police Department.

9. Keith Kaneshiro, Prosecuting Attorney of the City and County of Honolulu, has been attending these meetings in his capacity as the head of the Department of the Prosecuting Attorney.

10. Since hearing reports in December 2018 that Keith Kaneshiro received a target letter relating to the ongoing federal investigation concerning him and the Department of the Prosecuting Attorney, I have been uncomfortable with his continued attendance at the monthly public safety meetings when he, himself, is the target of a federal criminal investigation.

11. I understand that at this time, Mr. Kaneshiro has not been indicted, or proven guilty of any crime, however, based on my work with federal law enforcement, I understand the gravity of a target letter as opposed to a subject letter. Because of the lack of information regarding the allegations, I am unable to discern whether the continued practice of sharing confidential information with Mr. Kaneshiro is appropriate. I have

decided to err on the side of caution as I believe the sharing of any sensitive information with Mr. Kaneshiro at this point is not in the best interest of the Honolulu Police Department or the City and County of Honolulu.

12. On December 17, 2018, I expressed these concerns in an email I sent to Roy Amemiya, Managing Director of the City and County of Honolulu. Mayor Kirk Caldwell was on leave and not in the office at that time.

13. A true and correct copy of the December 17, 2018 email that I sent to Mr. Amemiya is attached hereto as Exhibit "1".

14. I believe that Mr. Kaneshiro's continued presence in the office of the Prosecuting Attorney while he is the target of an active federal criminal investigation severely impairs the ability of the Honolulu Police Department to work with the Department of the Prosecuting Attorney.

15. I am concerned that Mr. Kaneshiro's situation could adversely affect or compromise pending cases, closed cases, and future cases.

I, SUSAN BALLARD, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, February 6, 2019.


SUSAN BALLARD

No. SCPW- _____

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

CLARE E. CONNORS, ATTORNEY)	Original Proceeding
GENERAL OF THE STATE OF HAWAI‘I,)	
)	
Petitioner,)	
)	
vs.)	
)	
KEITH M. KANESHIRO, PROSECUTING)	
ATTORNEY OF THE CITY AND COUNTY)	
OF HONOLULU,)	
)	
Respondent.)	
_____)	

DECLARATION OF CLARE E. CONNORS

I, CLARE E. CONNORS, hereby declare pursuant to Rule 52, Hawai‘i Rules of Appellate Procedure, that:

1. I am a resident of the City and County of Honolulu, State of Hawai‘i, and am currently the Attorney General of the State of Hawai‘i.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. As the Attorney General of the State of Hawai‘i, I am the chief legal officer of the State. *See* Haw. Const. art. V., § 6; Hawaii Revised Statutes (HRS) § 26-7; *Amemiya v. Sapienza*, 63 Haw. 424, 425, 629 P.2d 1126, 1128 (1981). I am also the Director of the Department of the Attorney General. HRS § 26-7.
4. As Attorney General, my duties include appearing for the State in all civil and criminal cases in which the State is a party, and prosecuting cases involving violations

of the laws of the State. HRS §§ 26-7, 28-1, 28-2. I am also charged with such other duties and authority “as heretofore provided by common law or statute.” HRS § 26-7.

5. As the chief legal officer of the State, it is my responsibility to monitor the law enforcement activities of the State, including the Prosecuting Attorney of the City and County of Honolulu. *See* HRS § 46-1.5(17).

6. The Prosecuting Attorney of the City and County of Honolulu is charged with “[p]rosecut[ing] offenses against the laws of the state under the authority of the attorney general of the state.” Revised Charter of the City and County of Honolulu § 8-104(1)(b).

7. Accordingly, the Attorney General must have a good working relationship with the Honolulu Prosecuting Attorney. The Attorney General also has the duty to ensure the integrity of the prosecutions conducted on behalf of the City and County of Honolulu.

8. Reports that Honolulu Prosecuting Attorney Keith Kaneshiro received a target letter in December 2018, relating to the ongoing federal investigation targeting him and the Department of the Prosecuting Attorney have caused concerns about Mr. Kaneshiro’s ability to exercise his discretion without bias and to oversee the Department without conflict or encumbering circumstances. At the forefront of the Attorney General’s concern is the ability of the Department of the Prosecuting Attorney to administer justice under Mr. Kaneshiro’s leadership.

9. Concerns also arise from Mr. Kaneshiro’s continued involvement with the High Intensity Drug Trafficking Area program and other joint state-federal prosecution task forces. His involvement in these programs and his presence at the task force meetings while he is the target of an active federal criminal investigation himself severely impairs

the ability of those present to talk freely and to engage in the kind of discourse necessary to carry out such sensitive law enforcement initiatives. His participation presents a clear conflict between his personal interests and those of the law enforcement community and the public served by the Honolulu Prosecuting Attorney's office.

10. As an officer of the court, it is the responsibility of the Attorney General under Rule 8.3 of the Hawai'i Rules of Professional Conduct to report violations of the Hawai'i Rules of Professional Conduct.

11. Attached hereto as Exhibit "2" is a true and correct copy of a news article written by HNN Staff entitled City prosecutor shows no signs of stepping aside after getting formal notice that he's a target of federal probe, dated December 10, 2018, available at <http://www.hawaiinewsnow.com/2018/12/10/doj-sends-target-letter-honolulu-prosecutor-keith-kaneshiro/>, and printed from the Hawaii News Now website.

12. Attached hereto as Exhibit "3" is a true and correct copy of a news article written by Lynn Kawano entitled As part of widening corruption probe, DOJ sends subject letter to second-in-command at prosecutor's office, dated December 4, 2018, available at <http://www.hawaiinewsnow.com/2018/12/05/part-widening-corruption-probe-doj-sends-subject-letter-second-in-command-prosecutors-office/>, and printed from the Hawaii News Now website.

13. Attached hereto as Exhibit "4" is a true and correct copy of a news article written by Moanike'ala Nabarro entitled Pressure mounts on city's top prosecutor to step aside while he's under investigation, dated December 17, 2018, available at <http://www.kitv.com/story/39658215/pressure-mounts-on-citys-top-prosecutor-to-step-aside-while-hes-under-investigation>, and printed from the KITV website.

14. Attached hereto as Exhibit “5” is a true and correct copy of a news article written by Lynn Kawano entitled Facing federal probe, city prosecutor rejects calls to step aside, says his office runs ‘effectively’, dated December 17, 2018, available at <http://www.hawaiinewsnow.com/2018/12/17/facing-federal-probe-city-prosecutor-rejects-calls-him-step-aside-says-his-office-run-effectively/>, and printed from the Hawaii News Now website.

15. Attached hereto as Exhibit “6” is a true and correct copy of a news article written by Lynn Kawano entitled Defense attorneys question cases prosecuted by deputies facing federal corruption probe, dated December 14, 2018, available at <http://www.hawaiinewsnow.com/2018/12/15/defense-attorneys-begin-questioning-cases-prosecuted-by-deputies-under-federal-investigation/>, and printed from the Hawaii News Now website.

16. Attached hereto as Exhibit “7” is a true and correct copy of a news article written by Nick Grube entitled Honolulu Police Corruption Probe Now Includes Katherine Kealoha’s Brother, dated December 13, 2018, available at <https://www.civilbeat.org/2018/12/honolulu-police-corruption-probe-now-includes-katherine-kealohas-brother/>, and printed from the Civil Beat website.

17. Attached hereto as Exhibit “8” is a true and correct copy of a news article written by Nick Grube entitled Here’s A New Twist In The Honolulu Corruption Case, dated June 19, 2018, available at <https://www.civilbeat.org/2018/06/heres-a-new-twist-in-the-honolulu-corruption-case/>, and printed from the Civil Beat website.

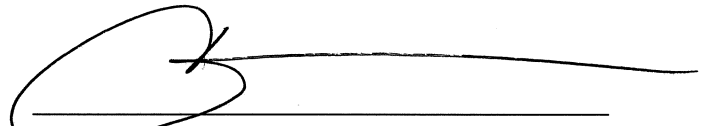
18. Attached hereto as Exhibit “9” is a true and correct copy of a news article written by Nick Grube entitled ‘Rare’ Request Seeks To Hide Criminal Case From

Honolulu Prosecutor, dated February 8, 2017, available at <https://www.civilbeat.org/2017/02/rare-request-seeks-to-hide-criminal-case-from-honolulu-prosecutor/>, and printed from the Civil Beat website.

19. Attached hereto as Exhibit "10" is a true and correct copy of a news article written by Lynn Kawano entitled From within the office of Honolulu's Prosecuting Attorney, new allegations emerge, dated February 11, 2019, available at <http://www.hawaiinewsnow.com/2019/02/12/new-evidence-allegations-against-honolulus-prosecuting-attorney-inside-his-office/>, and printed from the Hawaii News Now website.

I, CLARE E. CONNORS, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, February 12, 2019.



CLARE E. CONNORS

Go, Jamie

From: Zannes, Alexander C
Sent: Thursday, December 20, 2018 8:18 AM
To: Go, Jamie
Subject: FW: concern

From: Amemiya, Roy K. Jr.
Sent: Tuesday, December 18, 2018 4:47 PM
To: Deemer, Georgette; Zannes, Alexander C
Subject: FW: concern

From: Ballard, Susan
Sent: Monday, December 17, 2018 1:30 PM
To: Amemiya, Roy K. Jr.
Subject: concern

I am uncomfortable having Keith Kaneshiro and [REDACTED] at our public safety meetings since he has been sent a target letter from the FBI. I understand that he is innocent until proven guilty, but in my experience, if you get a target letter, you will be indicted. The sharing of any sensitive information at this point, I believe is not in the best interest of the police department or the city.

SUSAN BALLARD
CHIEF OF POLICE
808-723-3848
sballard@honolulu.gov

Exhibit 1



City prosecutor shows no signs of stepping aside after getting formal notice that he's a target of federal probe



City prosecutor shows no signs of stepping aside after getting formal notice that he's a target of f

By **HNN Staff** | December 10, 2018 at 9:25 AM HST - Updated December 11 at 6:30 AM

HONOLULU (HawaiiNewsNow) - City Prosecutor Keith Kaneshiro has received a Justice Department target letter informing him that he's under investigation in the federal public corruption probe that has already led to two indictments against his former top deputy, Katherine Kealoha.

Former U.S. Attorney and Honolulu prosecutor Loretta Sheehan says the development is sure to rattle the law enforcement community.

"Target letter means the grand jury has substantial evidence that you've engaged in criminal activity. You are going to be indicted," Sheehan said. "A subject letter you have the

opportunity to possibly not be indicted to possibly cooperate or to plead to a much lesser charge. Or if you're completely innocent, to clear up any misunderstanding."

Two other leading deputies, Chasid Sapolu and Janice Futa, have received Justice Department subject — but not target — letters.



The Case Against The Kealohas: A Hawaii News Now Special Report

Special federal prosecutor Michael Wheat is leading the public corruption probe.

His office sent target letters to ex-Honolulu Police Chief Louis Kealoha and other police officers in 2016, and all were immediately put on administrative leave. Months later, indictments came down on all of them.

Kaneshiro's office appears to be connected to those cases, which are set to go to trial next year.

Kaneshiro is accused of lying to protect Louis Kealoha's wife, Katherine, a former deputy city prosecutor.

Despite the new developments, Kaneshiro does not show signs of stepping down. And Mayor Kirk Caldwell told Hawaii News Now that the prosecuting attorney is elected and therefore he will not intervene.

[Also read: As part of widening corruption probe, DOJ sends subject letter to second-in-command at prosecutor's office]

Meanwhile, the state Attorney General's Office said on the issue that "when compelling circumstances exist, the attorney general may supersede the county prosecutor."

The office also said it is in contact with the city Prosecutor's Office.



City prosecutor gets target letter amid widening federal public corruption probe

Kaneshiro could be removed by voters in a recall or by the courts in an impeachment case, which would require a petition from voters.

"We'll see how it all plays out and really, at the end of the day, it does rest with the courts; and in almost every case, there could be a recall and it's not gonna come from the executive branch of the city government," Caldwell said.

"It's gonna come from the judicial branch or the people themselves."

Other experts say that if Kaneshiro is indicted, a judge could require he take leave from office as a condition of his pretrial release.

But Sheehan said members of law enforcement must live up to a high standard.

"When a law enforcement officer gets a target letter, of course of course he should step down of course," she said. "There's a cloud over your performance at this point in time, step down."

The federal probe into Kaneshiro apparently began when investigators learned that Katherine Kealoha allegedly convinced a judge to dismiss a speeding ticket against an electrician who was working for her.

Kaneshiro, Futa and Sapolu were called before a federal grand jury repeatedly on suspicion that they tried to cover up for Kealoha.

Related coverage:

Legal community urges action against Honolulu prosecutors mixed up in federal criminal probe



As part of widening corruption probe, DOJ sends subject letter to second-in-command at prosecutor's office



As part of widening corruption probe, DOJ sends subject letter to second-in-command at prosecutor's office

By **Lynn Kawano** | December 4, 2018 at 5:48 PM HST - Updated December 5 at 9:57 AM

HONOLULU (HawaiiNewsNow) - The city prosecutor's first deputy has received a subject letter from the U.S. Department of Justice, in a sign that a federal investigation into Honolulu's ex-police chief is now zeroing in on players at the city Prosecutor's Office.



A subject letter means that the U.S. Attorney believes first deputy Prosecutor Chasid Sapolu engaged in suspicious and unethical conduct, but wants to do more investigating.

"It scares the bejeezus out of people," said Ken Lawson, of the University of Hawaii Richardson Law School.

Exhibit 3

Keith Kaneshiro (Image: Hawaii News Now)

Lawson said a subject letter is one level below a target letter, but it's not something that should

be taken lightly,

"It's like any day now they could be knocking on my door. It puts the fear in people."

The development is significant as it represents the first official notification that an ongoing public corruption scandal — with ex-Police Chief Louis Kealoha at its center — has extended beyond the Honolulu Police Department.

Two years ago, Kealoha and four current and former Honolulu police officers — Gordon Shiraishi, Derek Hahn, Danny Sellers, and Bobby Nguyen — all got target letters from the DOJ.

Kealoha immediately put himself on administrative leave, while the officers were put on desk duty.

All were indicted months later.

Kealoha's wife, Katherine, was also indicted and has upcoming trials for more than a dozen criminal charges. She was a deputy city prosecutor before resigning in September.

Now, it's clear the scandal involves her former office and colleagues.

Special Prosecutor Michael Wheat, of the San Diego U.S. Attorney's Office, began to widen the scope of the investigation to include Honolulu city Prosecutor Keith Kaneshiro in 2016, when he refused to cooperate with the federal case involving the Kealohas.

[Also read: FBI corruption investigation targets city prosecutor]

[Also read: Ex-police chief's deputy prosecutor wife resigns as corruption trial nears]

Kaneshiro was reportedly forced to turn over information involving Katherine Kealoha's fixing of a speeding ticket for her electrician and various other requests.

After that, more of Kaneshiro's employees were brought in for questioning. The fixed speeding ticket eventually led to a questionable grand jury in state Circuit Court.

The FBI has interviewed witnesses connected to the proceedings to see if it was a ploy to get Katherine Kealoha out of trouble for fixing traffic violations for friends.

Sapolu's subject letter could be the result of this series of events.

Another possible reason the feds are looking at Kaneshiro and his employees, is over the controversial safe house for domestic violence victims that the prosecutor's office obtained through a questionable land deal.

Attorney Michael Green, who represents siblings who say Katherine Kealoha stole more than \$100,000 from a trust account she was managing for them, said the broadening investigation surrounding the prosecutor's office is troubling.

[Also read: FBI corruption investigation targets city prosecutor]

"Prosecute crime, that's what they're supposed to do," he said.

Lawson, meanwhile, said Sapolu should be put on leave given that he's a high level law enforcement official.

"Take him out of this environment right now, so that the process not only is clean, but it gives the appearance that it's above reproach," he said.

Late Tuesday afternoon, Hawaii News Now asked the Honolulu Prosecutor's Office if anyone else got a subject or target letter from federal authorities, and if Sapolu would be putting on administrative leave.

A spokesman has not responded to the request for comment.

<https://www.kitv.com/live-stream>**ON NOW: Watch Island News Digicast on Demand Sponsored by Recovery Law ...****75°**

(/weather) ☰

NEWS - TOP STORY

Pressure mounts on city's top prosecutor to step aside while he's under investigation

A probe to reexamine cases handled by the prosecutor's office is one some of the city's defense lawyers say they're on a mission to do.

Monday, December 17th 2018, 5:40 PM HST by Moanike'ala Nabarro



Days after one of Honolulu's lead deputy prosecutor's announced he's the subject of a federal investigation, some of Honolulu's top defense attorneys say they'll challenge past and pending cases.

A probe to re-examine cases handled by the prosecutor's office is one some of the city's defense lawyers say they're on a mission to do. It comes after our partners at Civil Beat reported Honolulu prosecutor Keith Kaneshiro received a target letter from the US Justice Department.

University of Hawaii Law professor Kenneth Lawson says re-examining cases can be seen as an obligation.

"What if these prosecutors put forth false evidence in the case where your clients been charge. What if these prosecutors normally put on perjured testimony from a police officer who is going to testify against your client... Have to go through all those cases. You have to go back. Why? because if you don't, you could be ineffective when you're representing a client," Lawson said.

Kaneshiro and two of his deputy prosecutor's received letters relating to suspected corruption and abuse of power in the highly publicized Kealoha debacle.

The city's top prosecutor has not yet commented on being a target of a federal investigation.

"It's pride. You're damned if you do, you're damned if you don't. If I tell you that I'm taking a leave of absence, you're not going to believe me. You think I'm leaving because I'm guilty," Lawson said.

Lawson commends deputy prosecutor Chasid Sapolu's decision to step down after learning he was under investigation too.

"It's not about you. We didn't elect you to be about you, we elected you because we put a public trust in you and you're going to help us confront criminal prosecution that you're going to be the face of justice," Lawson said.

An online petition to impeach Kaneshiro is growing launched by Tracy Yoshimura, a former defendant dismissed of gambling operation charges prosecutors brought against him.



Facing federal probe, city prosecutor rejects calls to step aside, says his office runs 'effectively'



Keith Kaneshiro responds to questions regarding federal investigation into the Prosecutor's office

By **Lynn Kawano** | December 17, 2018 at 12:35 PM HST - Updated December 17 at 11:19 PM



Facing federal probe, city prosecutor rejects calls to step aside, says his office runs 'effectively'

HONOLULU (HawaiiNewsNow) - For the first time Monday, embattled city Prosecutor Keith Kaneshiro responded to growing calls to step aside, saying that he was elected for four years and that his office is being run effectively.

Kaneshiro has received a target letter from the U.S. Department of Justice amid a widening public corruption probe, which has already netted lengthy indictments against ex-Police Chief Louis Kealoha and his wife, a former top-ranking deputy in Kaneshiro's office. Both have multiple federal trials scheduled for next year.

Four other police officers were also arrested in connection with the case and their trials are set for March.

On Monday, Hawaii News Now caught up with Kaneshiro as he left a budget meeting at city hall.

He has repeatedly ignored requests for comment and didn't answer most of the questions posed to him Monday.

But when asked about calls for him to step aside, Kaneshiro said that he had been elected for four years, an apparent indication that he intends to serve out his term if he's able.

He did not comment on efforts underway to impeach him, and was indignant when asked whether continuing to serve in his position was bad for the public and Honolulu's law enforcement community.

[Also read: City prosecutor shows no signs of stepping aside after getting formal notice that he's a target of federal probe]

[Also read: Campaign to impeach city prosecutor launched as he shows no signs of stepping aside amid federal probe]

"I was elected to serve for four years," he said.

"I think it's bad for the public when you folks go on harassing me. Our office is operating. Do you

have any evidence that it's not effective? It's effective."

Kaneshiro's former second-in-command, first Deputy Chasid Sapolu, took a leave of absence last week after confirming what Hawaii News Now reported — that he received a subject letter also from Justice Department.

Kaneshiro has named Dwight Nadamoto as his acting first deputy.

It's a move that indicates Sapolu may not be welcomed back as a result of his stepping down.

Sapolu was praised for the move by others in the legal community, who have been calling for Kaneshiro to also step aside while federal investigators continue their work.

Copyright 2018 Hawaii News Now. All rights reserved.



Keith Kaneshiro has named Dwight Nadamoto as his acting first deputy.



Keith Kaneshiro's former second-in-command, first Deputy Chasid Sapolu, took a leave of absence last week after confirming what Hawaii News Now reported — that he received a subject letter also from Justice Department. (Image: Hawaii News Now)

Sponsored Stories

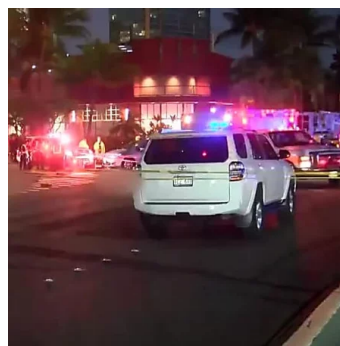
Recommended by



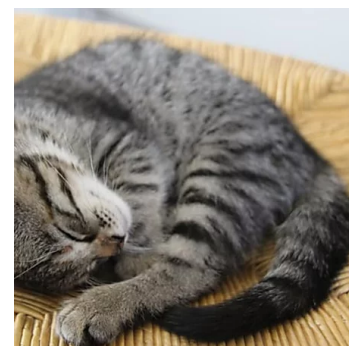
Couple dies on the way to their wedding in PA car crash

Taking Charge Knit Sheath Dress - Knee Length

ModCloth



Video from the scene shows devastating triple-fatal accident near Ward



3 Ways Your Cat Asks For Help

Dr. Marty

We Recommend

Have you ever tried a Ghetto Burger?



Defense attorneys question cases prosecuted by deputies facing federal corruption probe



Keith Kaneshiro. (Image: Hawaii News Now)

By **Lynn Kawano** | December 14, 2018 at 7:06 PM HST - Updated December 14 at 11:13 PM

HONOLULU (HawaiiNewsNow) - The attorney for convicted murderer Dae Han Moon sent a letter to the Honolulu Prosecutor's Office on Friday, requesting information about the federal public corruption investigation that has widened to include the prosecutor's office.

Victor Bakke, Moon's attorney, asked to see the target and subject letters the Department of Justice sent to Keith Kaneshiro and two of his deputies, Chasid Sapolu and Jan Futa.

Sapolu was the original trial prosecutor on the case.

Sapolu voluntarily put himself on administrative leave Thursday admitting that he received the subject letter and saying he would cooperate with the federal investigation.

Bakke praised Sapolu's decision saying it does eliminates any concerns people have about new cases coming in.

Exhibit 6

But Bakke criticized Futa and Kaneshiro, who appear to be refusing to follow Sapolu's lead and step aside despite political pressure and urging from other attorneys.

"This is causing damage every single day," Bakke said, "The defense attorneys love it, we'll be filing motions until the cows come home. because it's all tainted it's from the very top."

The federal investigation started with the ex-police chief and his wife, a former deputy prosecutor, but it expanded beyond Louis and Katherine Kealoha.

The couple and four police officers are awaiting federal trials and now, the prosecutor's office appears to be under fire.

Copyright 2018 Hawaii News Now. All rights reserved.



Deputy prosecutor Chasid Sapolu has received a subject letter from the U.S. Department of Justice.



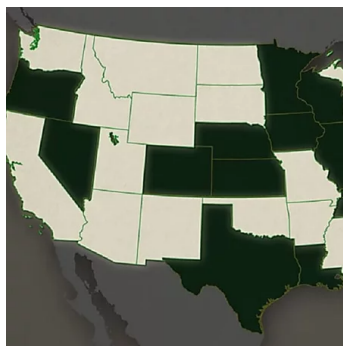
Janice Futa

Recommended by

Sponsored Stories



Police recommend charges against woman seen dragging dog with electric



Our Top 3 Marijuana Stocks You Can Own For Pennies
americascashcrop.com

Botanical Brunch A-Line Dress - Knee Length
ModCloth



Popular Ala Moana Center restaurant receives yellow placard

We Recommend

Pockets of power outages reported across island chain

Honolulu

Honolulu Police Corruption Probe Now Includes Katherine Kealoha's Brother

A federal grand jury continues to expand its investigation, now delving into prescription pain medications that were seized during a 2015 drug raid.



By Nick Grube    / December 13, 2018

 Reading time: 6 minutes.



The federal investigation into police and prosecutorial corruption in Honolulu has turned toward the Big Island and Katherine Kealoha's younger brother, Rudolph Puana, an anesthesiologist who used to be part-owner of a pain clinic there.

Special prosecutor Michael Wheat and his team of investigators issued a grand jury subpoena to Puana's ex-wife Lynn in early September requesting records from the clinic, which she used to co-own with her ex-husband.

Lynn Puana told Civil Beat this week that she and the clinic are cooperating fully with the U.S. Justice Department in its ongoing investigation.



Cory Lum/Civil Beat

Assistant U.S. Attorney Michael Wheat has spent years investigating alleged corruption in the Aloha State.

She also made clear that Rudolph Puana, who she divorced in 2016, no longer has any ownership interest in her practice. She renamed the clinic — formerly called Puana Pain LLC — to Big Island Pain Center and the website has also been scrubbed to remove any association with Rudolph Puana.

Lynn Puana said that she was “absolutely shocked” that federal investigators were seeking records from her business.

Related Coverage



Federal Investigators Are Digging Deeper Into Honolulu Prosecutor's Office

DECEMBER 7, 2018



Here's A New Twist In The Honolulu Corruption Case

JUNE 19, 2018

She said they wanted documents related to specific individuals who may have been patients at the clinic when Rudolph Puana was still working there.

She could not reveal any of the names, she said, due to possible medical privacy concerns, and noted that the investigators did not provide



How 'Blind Faith' Led To Hawaii's Biggest Police Corruption Scandal

APRIL 2, 2018



Did Honolulu Cops Issue Fake Tickets Or Did The Honolulu Prosecutor Make Up The Story?

MARCH 23, 2017

many details about the nature of their inquiry.

“My guess is that they were really trying to understand the scope of the prescriptions that have been issued,” Puana said. “I think they were trying to look at why these prescriptions were given and what the nature of those prescriptions were.”

She added that she was well aware of the DOJ's investigation into her in-laws, Katherine and Louis Kealoha. But she also acknowledged that her and her ex-husband's relationship with the Kealohas was tenuous at best.

For instance, she said she only saw Louis Kealoha, Honolulu's former police chief, a handful of times since 1998, the year she and Rudolph Puana met.

After receiving the subpoena, Lynn Puana hired Honolulu lawyer William Shipley, a former assistant U.S. attorney, to represent the clinic while investigators continue their probe.

Shipley said he's not sure what direction the investigation will take, but noted that his client has been fully compliant in the request for information.

“It's hard to say where they're headed because I don't really know everything that's being looked at,” Shipley said. “We've never been asked to provide an inventory or look at an inventory. We don't know what the allegations are other than the generalities.”

His top priority right now, he added, is to make sure the public understands that Rudolph Puana no longer has any relationship with the clinic.

Rudolph Puana, meanwhile, has hired a criminal defense attorney, Jeffrey Hawk, who did not respond to Civil Beat's request for comment.

A close friend of Puana, Chris McKinney, has also been called to testify before the federal grand jury. McKinney is a local writer, who [co-authored a biography](#) of Puana that was published in 2014 called “The Red-Headed Hawaiian.”

The book discusses Puana’s rough-and-tumble upbringing in Kahaluu on Oahu’s North Shore as well as his medical training at Creighton University and at MD Anderson Cancer Center in Texas.



Cory Lum/Civil Beat

Honolulu Prosecuting Attorney Keith Kaneshiro is avoiding questions about the DOJ’s investigation into him and his office.

McKinney, who grew up with Puana and Katherine Kealoha in Kahaluu, did not return phone calls seeking comment.

It’s unclear where Rudolph Puana fits into the larger DOJ investigation, which has been going on [since 2014](#).

But HPD documents obtained by Civil Beat through a public records request show that federal investigators have keyed in on an August 2015 drug raid and the prescription painkillers seized during the bust.

Those narcotics — 116 skin patches of fentanyl — were recovered during the arrest of Tiffany Masunaga and Alan Ahn, who at the time was an HPD

sergeant assigned to the department's traffic division.

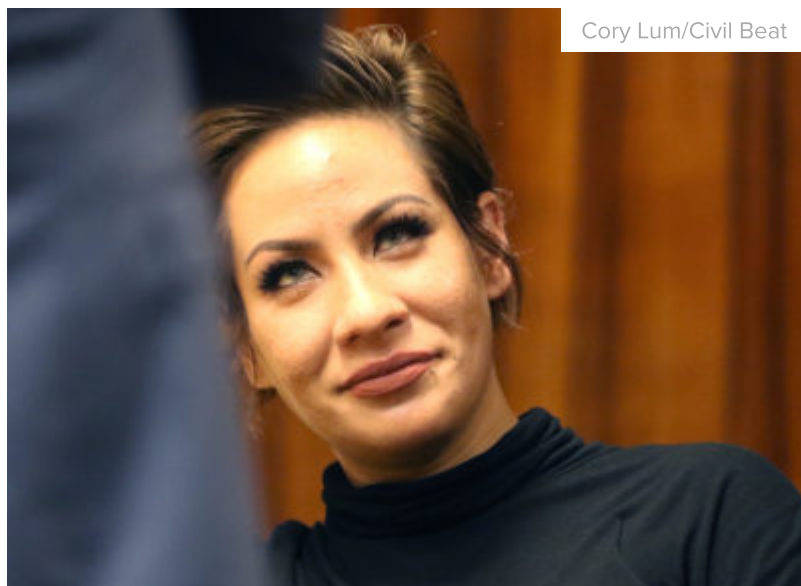
Officers involved in the raid also seized cocaine, marijuana, hydrocodone and alprazolam, which is commonly referred to under its trade name of Xanax.

According to HPD reports, federal investigators issued a confidential subpoena to the department around October 2017 that requested photographs of the fentanyl patches.

Less than a month later, Wheat and the FBI asked HPD to turn over evidence it collected from a forensic analysis of two cell phones that were recovered during the raid.

The new reports also show the drug bust was directed by Katherine Kealoha and an HPD officer, Daniel Sellers, who at the time was a member of HPD's secretive Criminal Intelligence Unit. Sellers is one of four officers indicted along with the Kealohas in the ongoing corruption probe.

The Masunaga case has taken on a more significant role in the DOJ investigation.



There are a lot of peculiarities involved in the arrest and prosecution of Tiffany Masunaga.

Her attorney, William Harrison, has said his client's [life is in danger](#) because she has information that might help federal investigators.

But the Honolulu prosecutors have effectively prevented her from talking by convincing her to

become an informant for them, a relationship they [tried to keep secret](#) by sealing public court records.

Katherine and Louis Kealoha were [indicted in October 2017](#) along with four other HPD officers for allegedly trying to frame a family member for the [theft of the Kealohas' mailbox](#). A fifth officer has already [pleaded guilty](#).

The Kealohas additionally face charges related to bank fraud and identity theft for allegedly bilking Katherine's grandmother and uncle out of tens of thousands of dollars.

Katherine Kealoha, a former deputy prosecuting attorney, is also accused of [stealing thousands of dollars from two children](#) who she once had guardianship over.

Wheat and his team of prosecutors now seem to be focusing more attention on Kealoha's former boss, Honolulu Prosecuting Attorney Keith Kaneshiro.

Among the suspicions are that Kaneshiro concocted a secret grand jury to [help cover up](#) for Katherine Kealoha, who was being investigated by federal authorities for [lying to a judge](#) to dismiss a speeding ticket for an acquaintance.

Masunaga and Ahn have also been called to appear before Kaneshiro's grand jury, proceedings that are now subject to DOJ scrutiny.

There are also concerns surrounding the city's purchase of [a \\$5.5 million apartment complex](#) from one of Kaneshiro's top political donors.

Kealoha and Kaneshiro are not the only people in the prosecutor's office who are suspected of possible wrongdoing. First Deputy Prosecutor Chasid Sapolu has also [received notification](#) from the the DOJ that he's a possible subject of their investigation.

Our journalism needs your help.

Honolulu

Here's A New Twist In The Honolulu Corruption Case

Recently unsealed court documents point to a questionable link between a suspect in a drug case and the Honolulu prosecutor's office.

By Nick Grube    / June 19, 2018

 Reading time: 6 minutes.

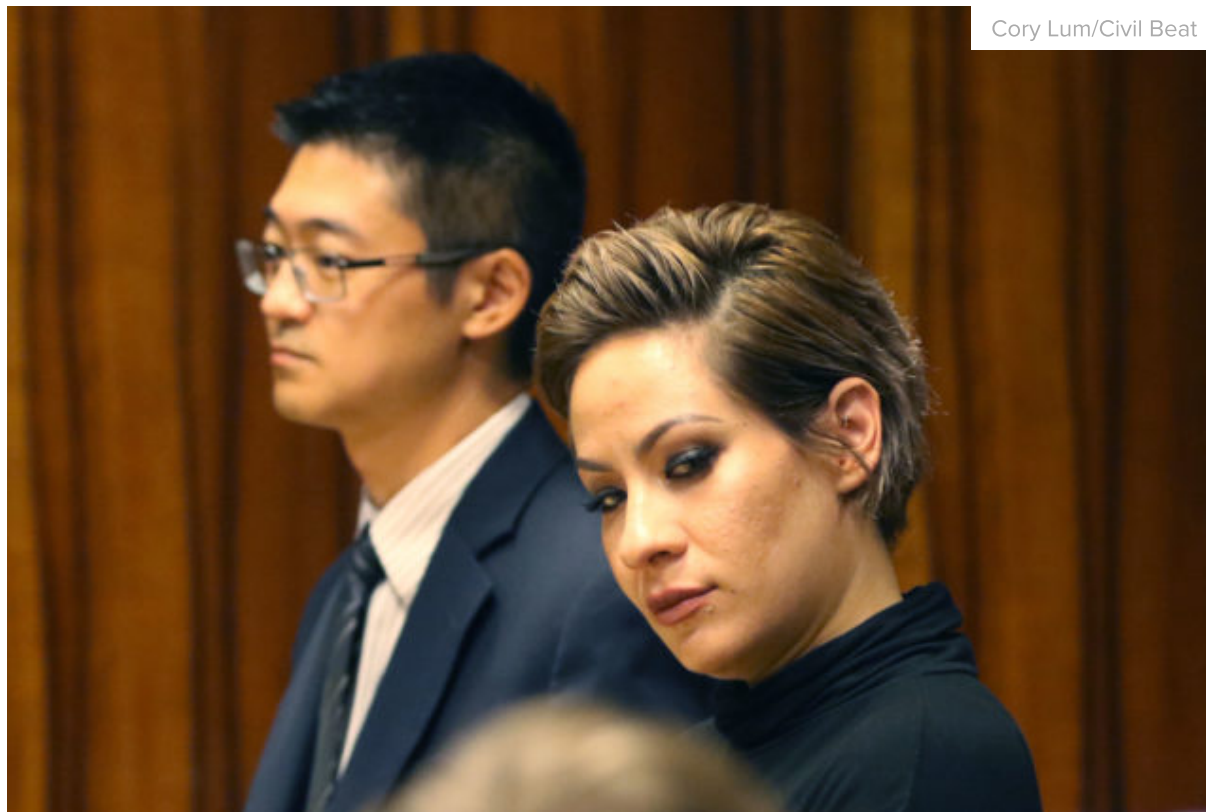


On Oct. 8, 2015, Tiffany Masunaga, an accused drug dealer, cut a deal with Honolulu Prosecuting Attorney Keith Kaneshiro that she hoped would keep her out of prison.

Instead, her attorney says, she's been held hostage by the agreement.

"I've been trying to get this case away from the prosecutor's office because of all the conflicts of interest that are involved," said William Harrison, the defense attorney who now represents Masunaga.

"She has information that law enforcement would probably want to hear, but because of this agreement she can't speak about it unless the prosecutor agrees to let her."



Tiffany Masunaga is still hoping to tell her story of possible corruption in the prosecutor's office to law enforcement.

So far that has yet to happen, Harrison said. Kaneshiro has refused to comment.

Masunaga was arrested in 2015 as part of an undercover drug sting conducted by the Honolulu Police Department. Alan Ahn, an HPD officer at the time, was also apprehended.

The duo was charged with a series of crimes related to possession of cocaine, marijuana and other prescription drugs, including the opioid fentanyl.


Ahn pleaded no contest to the charges in February 2017 and was sentenced to 60 days in jail three months later. Masunaga, meanwhile, has been in a state of prosecutorial purgatory.

Kaneshiro's office has not moved forward on her case, either by dismissing the charges or putting her on trial.

Last year, Harrison filed a motion to remove Kaneshiro's office from the case and have a special prosecutor appointed due to unspecified conflicts of interest.

The reason for the secrecy, Harrison said, was to protect his client. He said Masunaga is in possession of sensitive information that, if it were made public or shared with prosecutors, could endanger her life.

Katherine Kealoha, who's married to former HPD chief Louis Kealoha, was the lead prosecutor in the case. She's since been indicted on federal charges of conspiracy and fraud.



“The fact that this thing had been sealed really shows that the prosecutors wanted to protect somebody other than my client.” — William Harrison, defense attorney

At the time Masunaga entered into the cooperation agreement, Kealoha was still on the case. So too was Myles Breiner, who was serving as a defense attorney to both Masunaga and Kealoha at the same time.

Up until last week, Masunaga's cooperation agreement with the prosecutors had been kept secret.

The document only became public after a Civil Beat reporter challenged the legality of sealing the court record. The record had been sealed by Circuit Court Judge Rom Trader, a former city prosecutor, at the behest of Kaneshiro's office and without objection from Breiner, then Masunaga's attorney.

Trader's reasoning for sealing the documents hinged on Deputy Prosecuting Attorney Chasid Sapolu's contention that secrecy was necessary to maintain the integrity of an ongoing investigation, although he didn't divulge what that investigation might be.

The Hawaii Supreme Court sided with the Civil Beat reporter and ordered the release of the documents.



Prosecuting Attorney Keith Kaneshiro leaves the federal court in downtown Honolulu where investigators are scrutinizing him and his office as they root out corruption in law enforcement.

sealed from public view. Even the cooperation agreement, he said, is pretty typical.

According to the agreement, Kaneshiro offered Masunaga leniency during sentencing in her drug case if she agreed to cooperate with his office's

In addition to Masunaga's cooperation agreement, the newly released records include signed conflict of interest waivers from Kealoha and Masunaga that effectively allowed Breiner to represent them both.

Details about a Sept. 9, 2016, hearing, in which Masunaga pleaded no contest to the charges, were also made public.

Harrison said he saw no reason for any of the documents or proceedings to be

ongoing investigation.

The document also stated that Masunaga would be asked to provide “relevant, truthful and substantiated information” about police corruption, court officer corruption and other unspecified criminal activity.

She would be offered full immunity from any other charges that might arise as a result of her turning over such information.

Harrison said his client was only called once to testify before a special investigative grand jury that was being conducted by Kaneshiro’s office.

But Harrison said the prosecutors never asked her about the drug case involving her and Ahn. They didn’t even want to know the most obvious question — where did they get the drugs?

Instead prosecutors pressed Masunaga for any information she might have about HPD officers writing fake speeding tickets — sometimes referred to as “ghost tickets” — as part of a scheme to collect more overtime pay.

Kaneshiro and his office had come under scrutiny after it was revealed that federal investigators were looking into a speeding ticket Katherine Kealoha had dismissed on behalf of an acquaintance in 2014.

Kaneshiro said publicly that he ordered the dismissal as part of an investigation into ghost tickets. Since then defense attorneys have raised questions about whether Kaneshiro, an elected prosecutor, [made up the story](#) to provide cover for Kealoha.

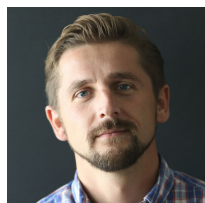
Although Harrison said he couldn’t comment specifically about what his client knows, he said it’s clear to him that the cooperation agreement and the decision to seal it is a purposeful way of hiding information that, he says, harms the prosecuting attorney’s office.

“The fact that this thing had been sealed really shows that the prosecutors wanted to protect somebody other than my client,” Harrison said.

He added that the federal government is well aware of his case, and that he has been in contact with officials at the Justice Department.

Thoughts on this or any other story? Write a Letter to the Editor. Send to news@civilbeat.org and put Letter in the subject line. 200 words max. You need to use your name and city and include a contact phone for verification purposes. And you can still comment on stories on [our Facebook page](#).

About the Author



Nick Grube [Twitter](#) [Email](#) [RSS](#)

Nick Grube is a reporter for Civil Beat. You can reach him by email at nick@civilbeat.org or follow him on Twitter at [@nickgrube](https://twitter.com/nickgrube). You can also reach him by phone at 808-377-0246.

[Use the RSS feed to subscribe to Nick Grube's posts today](#)

THIS IS YOUR WAKE UP CALL.

Sign up for our FREE morning newsletter and face each day more informed.

And don't worry, we hate spam too! You can unsubscribe any time.

Honolulu

'Rare' Request Seeks To Hide Criminal Case From Honolulu Prosecutor

Attorney William Harrison wants the state or an independent prosecutor to take over a high-profile drug case involving a client who fears for her life.

By Nick Grube    / February 8, 2017

 Reading time: 4 minutes.



A Honolulu defense attorney is taking the rare step of asking a judge to disqualify the entire city prosecuting attorney's office from pursuing a high-profile drug case against one of his clients because of a conflict of interest that he says puts her life in danger.

William Harrison represents Tiffany Masunaga, who is currently facing felony drug charges after her arrest in 2015 as part of an undercover narcotics sting by the Honolulu Police Department. The investigation also netted Alan Ahn, a corrupt former cop who now faces [up to 10 years in prison](#).

On Tuesday, Harrison filed a motion in state court that seeks to prevent city prosecutors from handling the case against Masunaga due to a "serious conflict issue" that he says taints the entire department, including Honolulu Prosecuting Attorney Keith Kaneshiro.



Honolulu attorney William Harrison, right, says there are too many conflicts of interest inside the city prosecutor's office to keep his client safe.

Harrison said he would prefer that the Hawaii attorney general's office or other neutral, third-party prosecutor — such as from a neighbor island — be appointed to the case so that his client can be protected from unfair prosecution.

"It is a very rare motion to file," Harrison told Civil Beat. "I can't recollect ever filing a motion to disqualify the prosecuting attorney's office in a case."

Related

HPD Chief Got His \$250K Payout But No One Will Say Who Gave It To Him

FEBRUARY 3, 2017

Can One Attorney Sue The Chief And Defend Him At The Same Time?

Harrison, who's been practicing criminal law for 36 years, refused to divulge what conflicts the prosecutor's office might have. He said doing so publicly could threaten Masunaga's safety as well as hinder other ongoing criminal investigations.

Masunaga and Ahn were arrested in August 2015 after a police raided their

JANUARY 26, 2017

**Is HPD Chief's
Departure Just The
Beginning Of An
'Ugly' Mess?**

JANUARY 9, 2017

**The Plot Thickens In
The Honolulu Police
Chief Conspiracy
Case**

JANUARY 3, 2017

house and found cocaine, marijuana and other prescription drugs. They were both charged with numerous counts of promoting dangerous drugs

Ahn pleaded no contest to the charges on Jan. 31, and is scheduled for sentencing in April. He has asked the judge for leniency so that he can avoid jail time and have his record wiped clean if he stays out of trouble.

Harrison has asked Circuit Court Judge Rom Trader to review his motion in secret. He also asked that city prosecutors be precluded from hearing the evidence to the support the motion, saying that doing so could also harm his client.

In court records, Harrison says that Masunaga is “in possession of facts and evidence which if publicly disclosed would jeopardize her safety and be detrimental to ongoing investigations.” He further notes that the information came to him via “confidential communications” that should not be disclosed to prosecutors because of the conflicts.

Harrison told Civil Beat that he’s absolutely adamant about protecting his client’s safety, which is why he doesn’t want anyone in Kaneshiro’s office getting their hands on the information Masunaga supposedly has in her possession.

“This information really should not go to the prosecutor’s office because of the conflict itself,” Harrison said. “We want to stay away from anybody who could do her harm, and we include in that the prosecutor’s office.”

Harrison would not comment on what he thinks are specific conflicts of interest.

But Deputy Prosecuting Attorney Katherine Kealoha, who heads the career criminal division, has been helping prosecute the Masunaga case.

Kealoha is married to outgoing Honolulu Police Chief Louis Kealoha. Both are involved in a U.S. Justice Department investigation for [corruption and abuse of power](#) stemming from allegations that they framed a family member to gain the upper hand in a legal dispute over money.

Since Ahn was a Honolulu police officer, it's unclear why she was assigned to the case.

Kaneshiro refused to comment on Harrison's motion, saying through spokesman Chuck Parker that the office doesn't discuss pending or ongoing cases.

Civil Beat also asked about Kealoha's potential conflicts in the Ahn case because of her relationship to the chief. Parker refused to comment on that as well.

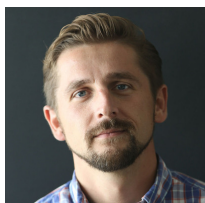
Harrison recently took over the case from attorney Myles Breiner.

Breiner has raised eyebrows in the legal community because he is the Kealohas criminal defense attorney at the same time that he has been representing other clients, like Masunaga, in cases against the HPD.

Breiner refused to comment about the Masunaga case to Civil Beat.

A federal judge last month removed him from another case in which he was suing HPD on behalf of two men who were assaulted by an undercover cop.

About the Author



Nick Grube [Twitter](#) [Email](#) [RSS](#)

Nick Grube is a reporter for Civil Beat. You can reach him by email at nick@civilbeat.org or follow him on Twitter at



From within the office of Honolulu's Prosecuting Attorney, new allegations emerge

City Prosecutor Keith Kaneshiro and his assistant, Carol Nakamura avoid HNN cameras

By Lynn Kawano | February 11, 2019 at 7:23 PM HST - Updated February 11 at 9:41 PM

HONOLULU (HawaiiNewsNow) - Two employees who testified against their boss, are now facing disciplinary action.

The women, who didn't want their names used, believe they are being retaliated against because they were grand jury witnesses in the federal, public corruption case against Keith Kaneshiro.

Kaneshiro received a target letter from the Department of Justice late last year but is refusing to put himself on administrative leave.

Both women were sent subpoenas by special prosecutor in California assigned to the case, Michael Wheat.

Exhibit 10

One woman, who works at the domestic violence safe house run by the prosecutor's office, says she was summoned after other employees turned in surveillance video from the safe house's administrative office.

"They asked me who was in the video, what was happening," she tells Hawaii News Now. It appears the workers are shredding documents, then you see the, then director of the safe house, Libby Lee Hobbs, place a piece of folder paper over the camera and tape it there.

After the woman testified on November 15, 2018, she says Roger Lau, the Special Assistant to the Prosecuting Attorney, called her in to his office.

"He asked me how it went, and who I spoke to, and what were they asking me and I was like, I don't really want to share everything," the woman said she didn't feel comfortable talking about it because Lau is very close to Kaneshiro.

After that exchange she says the retaliation started.

"Ever since then they would nitpick everything I do."

Now, that woman is being disciplined, for not following orders.

The letter she was served with says "Further incidents of a similar nature will result in more, severe action including termination."

That letter is signed by Keith Kaneshiro.

"They even told me they're watching me on the cameras for my entire shift, just to let me know they have eyes everywhere," the woman says she felt intimidation and believes they were sending a message to other employees who could possibly testify against the boss.

The other woman also called to the grand jury, testified three times last year. Our cameras were there as she left the grand jury room on one of those occasions, Special Assistant Roger Lau was leading the way out of the courthouse.

Days ago, she was also given a disciplinary letter signed by Kaneshiro.

Attorney Megan Kau, a former prosecutor and legal expert says this is exactly why Kaneshiro needs to be on administrative leave.

"Once he sent those disciplinary notices to those employees, signed them, and said you are hereby put on notice... I think it's moved over to tampering with a witness or obstruction of justice." Kau says that puts the city and taxpayers at risk. "It opens that office up to wrongful termination, whistle blower claims, a multitude of lawsuits that can be brought against him and the city."

The only agency that can force Kaneshiro to leave office, according to the charter, is the state Attorney General's office.

An impeachment effort is moving through the courts with the next hearing is scheduled for later this week.

Copyright 2019 Hawaii News Now. All rights reserved.

Sponsored Stories

No. SCPW- _____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CLARE E. CONNORS, ATTORNEY)	Original Proceeding
GENERAL OF THE STATE OF HAWAI'I,)	
)	
Petitioner,)	
)	
vs.)	
)	
KEITH M. KANESHIRO, PROSECUTING)	
ATTORNEY OF THE CITY AND COUNTY)	
OF HONOLULU,)	
)	
Respondent.)	
_____)	

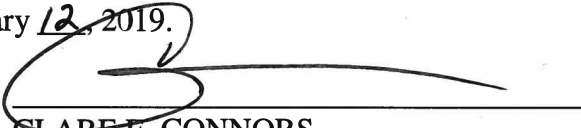
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing Petition for Extraordinary Writ; Statement and Discussion of Pertinent Facts, Statement of Jurisdiction and Authority, Statement of Issues and Relief Sought, and Statement of Reasons for Issuing the Writ; Declaration of Susan Ballard; Declaration of Clare E. Connors; Exhibits "1" – "10"; and Certificate of Service were duly served on the following parties by electronic filing and service via the JEFS system:

KEITH M. KANESHIRO
Prosecuting Attorney
Department of the Prosecuting Attorney, City and County of Honolulu
1060 Richards St.
Honolulu, Hawai'i 96813

Respondent

DATED: Honolulu, Hawai'i, February 12, 2019.



CLARE E. CONNORS
Attorney General
State of Hawai'i